

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CLEAR SPRING PROPERTY AND
CASUALTY COMPANY,

Plaintiff,

v.

Case No. 8:22-cv-02708-TPB-SPF

TODD SMRKE,

Defendant.

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ORDER

This cause comes before the Court upon Plaintiff's Motion for Default Judgment (Doc. 16). Because the Motion fails to comply with the requirements of the Servicemembers Civil Relief Act, 50 U.S.C. § 3931, Plaintiff must file a supplement within fourteen days or the Motion will be denied without prejudice.

Under the Servicemembers Civil Relief Act, for "any civil action . . . in which the defendant does not make an appearance," the court, "before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit—(A) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or (B) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service." 50 U.S.C. § 3931(b)(1). "The requirement for an affidavit . . . may be satisfied by a statement, declaration, verification, or certificate, in writing, subscribed and certified or declared to be true under penalty of perjury." *Id.* § 3931(b)(4).

Here, Plaintiff has submitted no affidavit or appropriate alternative. Instead, in its Motion, Plaintiff states that "upon information and belief" Defendant is not a servicemember.

This is insufficient. Based on the statutory language, Plaintiff's statement must be made under penalty of perjury and must provide necessary facts to support that Defendant is not in military service. *See Se. Farms, Inc. v. Watkins*, No. 3:19-cv-565-J-32MCR, 2019 WL 13155429, at *1 (M.D. Fla. Oct. 28, 2019).

Accordingly, it is hereby

ORDERED:

- (1) Plaintiff shall file a supplement to its Motion for Default Judgment (Doc. 16) that satisfies the requirements of 50 U.S.C. § 3931(b) within fourteen days from the date of this Order; and
- (2) Failure to timely file an appropriate supplement may result in the immediate denial of Plaintiff's Motion for Default Judgment (Doc. 16).

ORDERED in Tampa, Florida, October 3, 2023.



SEAN P. FLYNN
UNITED STATES MAGISTRATE JUDGE